



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 7944-98
8 February 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your late husband's naval record pursuant to the provisions of title 10 of the United States Code section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 27 January 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your late husband's naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

Your husband enlisted in the Navy on 4 November 1953 for six years at age 24. He subsequently extended that enlistment for two years. The record shows that he served without incident for over six years.

On 6 July 1960 he made a statement admitting to participation in homosexual acts. Based on this admission he was processed for an administrative discharge. Subsequently the discharge authority approved the recommendation of the commanding officer that he be discharged for unfitness with an undesirable discharge. He was so discharged on 3 March 1961.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as his lengthy period of good service. The Board found that these factors were not sufficient to warrant recharacterization of his discharge. The Board was aware that even under current regulations a discharge under other than honorable conditions could be issued in similar cases of aggravated homosexual activity. The Board concluded that the discharge was proper as issued and no change is warranted.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

The Board believes that you may be eligible to establish eligibility for veterans' benefits based on your husband's completion of his initial six year enlistment. However, the determination whether or not to grant benefits is a matter solely within the discretion of the Department of Veterans Affairs (DVA). Therefore, if you have been denied benefits you should appeal that denial under procedures established by the DVA.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director